



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: February 16, 2016

or Procurement Director Award ☐

Contractor/Vendor Name (DBA): Borderland Construction Company, Inc. (Headquarters: Tucson, AZ)

Project Title/Description:

Construction Manager At Risk (CMAR) Services for Old Nogales Interceptor/Aerospace Corridor/Park Avenue Sewer Augmentation - Project No. 3ASC15

Purpose:

Award of Contract, Contract No. CT-WWW-16-208 to the most qualified respondent to provide preconstruction services for the subject project in the amount of \$576,735.21. Contract term from February 16, 2016 to July 31, 2020.

Administering Department: Regional Wastewater Reclamation Department.

Procurement Method:

Pursuant to A.R.S. Title 34 and Board of Supervisors Policy D29.1(A) Qualifications Based Selection, Solicitation for Qualifications No. 187502 was conducted to establish a contract for preconstruction, and subsequently construction services for the Old Nogales Interceptor/Aerospace Corridor/Park Avenue Sewer Augmentation - Project No. 3ASC15. Three (3) responsive Statements of Qualifications were received, reviewed, and scored by a seven member selection committee. All three firms were invited to participate in interviews and based upon the combined score of the Statement of Qualification and the Interview, Borderland Construction Company, Inc was determined to be the most qualified respondent. Pima County Board of Supervisors approval will be requested at a future date for award of construction services and approval of a Guaranteed Maximum Price (GMP). Note: this project may require multiple GMPs and Board of Supervisors approval will be requested for all.

Attachments: Contract No. CT-WWW-16-208, Notice of Recommendation for Award

Program Goals/Predicted Outcomes:

This contract will provide for the preconstruction services of a gravity system to carry all future tributary flows from as far east as the Arizona State Prison Complex (ASPC) on Wilmot to the intersection area of 36th Street and 2nd Avenue. The flows will travel from the ASPC west along the Old Vail Road and then north along the Old Nogales Highway to the Hughes Access Road area. From the Hughes Access Road area flows will continue traveling north along the proposed Old Nogales Interceptor (ONI) alignment, which will eventually discharge into the Southeast Interceptor (SEI) near the intersection of 36th Street and 2nd Avenue. The Project will be designed for 14.37 MGD peak dry weather flow. The Park Avenue Sewer alignment shall consist of diverting sewer flows coming south and west to the intersection of Park Avenue and Drexel Rd and taking them along Drexel Rd from Park Ave to the proposed ONI.

Public Benefit:

The design and construction of this project will provide for the augmentation of existing conveyance systems and for construction of a new gravity conveyance sewer to support the anticipated future development along the Aerospace Corridor.

Metrics Available to Measure Performance:

Project schedule, Contract Fee Schedule and Established Milestones.

Retroactive:

No

Procure Dept 02/01/16 PM 1:16

To CoB: 2-3-16

135pgs(1)

M44

Original Information

Document Type: CT Department Code: WW Contract Number (i.e., 15-123): 16-208
Effective Date: 02/16/2016 Termination Date: 07/31/2020 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount: \$ 576,735.21 ☐ Revenue Amount: \$ _____
Funding Source(s): RWRD Obligations

Cost to Pima County General Fund: \$0

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards
Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards
Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Effective Date: _____ New Termination Date: _____
☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____
Funding Source(s): _____

Cost to Pima County General Fund: _____

Contact: Keith E. Rogers

Department: Procurement

Department Director Signature/Date: [Signature] 1/19/16

Deputy County Administrator Signature/Date: [Signature] 1/25/16

County Administrator Signature/Date: [Signature] 1/26/16

(Required for Board Agenda/Addendum Items)

Telephone: 724-3542

NOTICE OF RECOMMENDATION FOR AWARD

The Pima County Procurement Department - Design & Construction Division hereby issues formal notice to participating respondents for **Solicitation No. 187502 – OLD NOGALES INTERCEPTOR / AEROSPACE CORRIDOR / PARK AVENUE SEWER AUGMENTATION PROJECT NO. 3ASC15** that the following listed respondent will be recommended for award as indicated below. The award action will be performed by the Pima County Board of Supervisors on or after February 16, 2016.

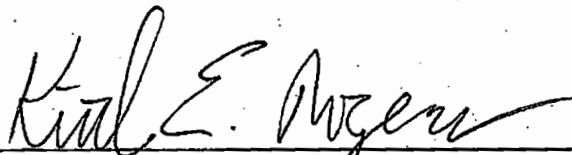
AWARDEE NAME

Borderland Construction Company, Inc.

OTHER FINAL LISTED FIRMS:

KE&G Construction, Inc.
Markham Contracting Company, Inc.

Issued by:



Keith E. Rogers, CPPB
Contracts & Commodities Officer
Phone: 520-724-3542

Date 01-19-2016

This notice is in compliance with Pima County Procurement Code §11.12.060

Copy to: Pima County Vendor Relations/SBE – 4-3646

**PIMA COUNTY REGIONAL WASTEWATER RECLAMATION
DEPARTMENT**

PROJECT: CONSTRUCTION MANAGER AT RISK
SERVICES FOR OLD NOGALES
INTERCEPTOR / AEROSPACE CORRIDOR
/ PARK AVENUE SEWER AGUMENTATION
- PROJECT 3ASC15

CONTRACTOR: Borderland Construction Company, Inc.
400 East 38th Street
Tucson, AZ 85713

AMOUNT: \$576,735.21

FUNDING: RWRD Obligations

CONTRACT

NO. CF-WW-16*208

AMENDMENT NO. _____

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

(stamp here)

CONSTRUCTION MANAGER AT RISK

THIS CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona, hereafter called COUNTY, and Borderland Construction Company, Inc., hereafter called "CMAR" or "CONTRACTOR", individually, and collectively described as a "Party" or the "Parties", respectively.

WITNESSETH

WHEREAS, COUNTY requires the services of a Construction Manager at Risk (CMAR) to perform Pre-construction Services and, upon mutual agreement of the Parties, Construction Services for the above-named Project (hereafter the Project); and

WHEREAS, COUNTY requires CMAR to participate as a member of the Project Team, consisting of CMAR, the selected Design Professional(s), and COUNTY during Preconstruction and other required phases of the Project; and

WHEREAS, CMAR has represented to COUNTY that CMAR has the requisite skill, expertise and resources to provide Construction Manager at Risk services and to construct the Project; and

WHEREAS, CMAR was determined on the basis of its representations submitted in response to Solicitation for Qualifications # 187502 to be the most qualified applicant based on COUNTY's evaluation of qualifications; and

WHEREAS, at its regularly scheduled meeting on February 16, 2016, the Board of Supervisors approved the award of the Contract to CMAR for the not to exceed amount of \$576,735.21 for Preconstruction Services; and

WHEREAS, COUNTY intends to negotiate with CMAR regarding general conditions, construction fees, and other elements of the Guaranteed Maximum Price (GMP) for construction.

NOW, THEREFORE, the Parties hereto agree to the following:

ARTICLE 1 - TERM

This Contract, as approved by the Board of Supervisors, commences on February 16, 2016 and terminates on July 31, 2020 unless sooner terminated or further extended for Project completion. COUNTY may, with written notice to CMAR, extend this Contract for such additional period or periods as may be required for Project completion.

ARTICLE 2 - SCOPE OF WORK

A. CMAR will perform all needed services in the Pre-construction and per amendment to this Contract. Construction Services Phases of the Project, and provide all material, equipment, tools, and labor necessary to satisfactorily complete all Work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively "Scope of Work", "Project Work" or "the Work"), as more fully described in

APPENDIX A: SCOPE OF WORK and **APPENDIX F: INCORPORATED STANDARD DOCUMENTS** to this Contract. This Contract covers only Preconstruction Services and is not effective as a Contract for Construction Phase services until such time as the Parties agree on a Guaranteed Maximum Price (GMP), including CMAR's Construction Phase Fee, and incorporate those terms into this Contract by Amendment.

- B. COUNTY has retained CMAR to provide construction and costing expertise as part of the Project Team. The Project Team's goal is to deliver a quality Project, on schedule, at or below budget that meets COUNTY's needs. CMAR understands, therefore, that active participation and contribution of its expertise in Preconstruction is critical to the success of the Project and is the essence of this agreement for Preconstruction Services. In furtherance thereof, CMAR will take leadership in the development of the cost model and schedule for design and construction of the Project and commits to actively participate in design meetings and reviews and apply its best expertise and knowledge to identify and recommend alternatives to advance the Project. The use of terms like "constructability review" or "value engineering" to describe activities expected of CMAR is not meant to imply that CMAR will only provide after-the-fact design reviews. CMAR will actively contribute its expertise in advance of and during design on an ongoing basis and design will be accomplished collaboratively. The Parties desire to avoid a process of designing, reviewing, and redesigning the Project.
- C. CMAR will provide scheduling, budget and cost expertise as part of the Preconstruction team. CMAR's experts must be able to advise and render opinions to the team on a near real-time basis concerning impacts to the Project budget and schedule arising from proposed design alternatives or design options being explored during the design process. The Project Team will use this advice to help decide if proposed alternatives or options should be pursued. Nothing in this **Article 2** requires that CMAR provide design services.
- D. CMAR will develop detailed Project construction estimates, study labor conditions, research and provide advice regarding materials, alternatives, methods, means, constructability, and sequencing and otherwise contribute to the advancement and development of the Project throughout the Pre-construction phase. CMAR will update and refine the cost model as design progresses. CMAR will actively track estimated construction costs throughout Preconstruction Services Phase and will advise the team any time that the estimated construction costs approach or exceed COUNTY's budget for construction.
- E. At such time during the Preconstruction Services phase that COUNTY directs, CMAR will prepare a cost estimate and provide a GMP for construction of the Project (or for a segment of the Project, if construction is to be in phases) for COUNTY's review and approval. If the GMP proposed by the CMAR is acceptable to COUNTY, the Parties will execute an Amendment to this Contract to incorporate the GMP and supporting documents as may be necessary to define the scope of construction Work covered by the GMP. If the GMP is not within COUNTY's construction budget or the budget for the Project segment, if phased, COUNTY reserves the right to terminate this Contract or act as otherwise provided in **Article 2.3.7.3 of APPENDIX B: CMAR – DP GENERAL CONDITIONS**. Acceptance by COUNTY of one or more phased GMPs does not obligate COUNTY to accept any succeeding GMP.
- F. The Construction Services Phase will begin upon acceptance and execution by COUNTY of CMAR's GMP, or the first GMP in the event of multiple GMPs. Construction will be accomplished in accordance with this Contract, including all Appendices and Exhibits, and the construction documents to be developed under this Contract. CMAR agrees to provide efficient business administration and superintendence, and exercise its best judgment and skill to complete the Project in the most expeditious and economical manner consistent with the best interests of COUNTY.
- G. Changes in the scope or fee for the Preconstruction Services Phase must be accomplished by an amendment to this Contract executed by the Parties. Preconstruction Services costing in excess of the agreed Preconstruction Services fee will be at CMAR's own expense.
- H. COUNTY has the option to request additional Project-related Preconstruction and/or Construction Services within the scope of this Contract.

ARTICLE 3 - PRECONSTRUCTION PHASE FEE AND GUARANTEED MAXIMUM PRICE

- A. COUNTY will pay CMAR a Preconstruction Services Phase Fee for Preconstruction Services. The CMAR's Construction Services Phase Fee, plus the cost of the Work (direct construction cost) plus a contingency, bonds, insurance and taxes (indirect construction costs) will comprise the GMP to be established in compliance with **APPENDIX B: CMAR – DP GENERAL CONDITIONS** and **APPENDIX D: CONSTRUCTION COSTING**. Unless otherwise agreed, CMAR's GMP will include all required sales, use, franchise and other taxes in effect

on the date of COUNTY approval of the GMP, as well as all applicable bond and insurance costs.

- B. The Preconstruction Services Phase Fee will not exceed Five Hundred Seventy Six Thousand Seven Hundred Thirty Five Dollars and Twenty One Cents (\$576,735.21) as detailed in **Exhibit E**. The Construction Services Phase Fee will be a fixed fee, will be set forth in GMP described in **Article 2.E** above and, if approved by COUNTY, will be incorporated into this Contract by Amendment.
- C. If the GMP requires an adjustment due to changes in the Scope of Work during the Construction Services Phase, the cost of such changes will be priced under **Article 10 of APPENDIX B: CMAR – DP GENERAL CONDITIONS**.
- D. For COUNTY-caused construction delays, either agreed to or awarded, CMAR will provide all the necessary extended general conditions for a daily sum as provided for in **Article 10.3 of APPENDIX B: CMAR – DP GENERAL CONDITIONS**.

ARTICLE 4 - PROCEDURE FOR PAYMENT

- A. **Progress Payments:** For Preconstruction Services, CMAR will submit to COUNTY within one (1) week of the last business day of each month CMAR's application for payment based on the percentage completed for each Preconstruction design phase as agreed to by COUNTY. COUNTY will make payment for CMAR's Construction Services in accordance with **Article 7 of APPENDIX B: CMAR – DP GENERAL CONDITIONS**. All construction costs which exceed the GMP and are not authorized by change order are to be paid by the CMAR and not COUNTY.
- B. **Record Keeping and Financial Controls.** With respect to all Work performed by CMAR, its subcontractors and consultants under this Contract, CMAR, its subcontractors and consultants will keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and subject to approval by COUNTY. During performance of the Work and for five (5) years after final payment, CMAR will retain and will also require all subcontractors and any consultants to retain for review or audit by COUNTY all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by COUNTY, CMAR will produce a legible copy or the original of any or all such records at any time during or after the Work as COUNTY may request. CMAR will submit to COUNTY, upon request, all payrolls, reports, estimates, records and any other data concerning work performed or to be performed and concerning materials supplied or to be supplied, as well as subcontractor or consultant payment applications or invoices and such subcontractor's or consultant's progress payment checks. The requirements of this section must be provided for in all Contracts between CMAR and its subcontractors and consultants.
- C. **Audit.** For a period of five (5) years from Final Payment under this Contract, COUNTY reserves the right to audit and question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

ARTICLE 5 - CONTRACT TIME

- A. Time is of the essence with respect to the dates and times set forth in the Contract documents. CMAR understands that the time(s) for completion(s) set forth in these Documents are essential to the COUNTY and a material consideration for this Contract.
 - B. The Work and Contract time commence within five (5) days of CMAR's receipt of COUNTY's notice to proceed (NTP) unless the Parties agree otherwise in writing.
 - C. CMAR will achieve substantial completion of the entire Work (the substantial completion date) no later than one thousand eight hundred, (1,800), calendar days after receipt of the NTP, subject to adjustments in accordance with the Contract Documents.
 - D. CMAR will achieve interim milestones and substantial completion of identified portions or phases of the Work as follows, subject to adjustments in accordance with the Contract Documents:
 - 1. Pre-Construction Services to coincide with design completion date.
 - 2. GMP #1 no later than 1 month after obtaining ADEQ Construction Authorization.
-

- E. Final Completion.** CMAR will achieve final completion of the entire Work or portion or phase thereof within sixty (60) calendar days after the date established for substantial completion of the entire Work or corresponding portion or phase thereof, unless otherwise agreed in writing.
- F. Liquidated Damages.** CMAR understands and acknowledges that if it does not achieve substantial completion by the substantial completion date provided in **Article 5.C** or by the dates in **Article 5.D** above for identified portions or phases of the Work, COUNTY will suffer damages, which are difficult to accurately quantify and ascertain. CMAR agrees that if it does not achieve substantial completion for each portion or phase of the Work, CMAR will pay COUNTY One Thousand Seven Hundred Eighty dollars (\$1,780.00) per day as liquidated damages for each calendar day that substantial completion for each portion or phase extends beyond the scheduled substantial completion date(s). If CMAR does not achieve final completion within the time period defined by **Article 5.E.** above, CMAR will pay COUNTY One Thousand Seven Hundred Eighty dollars (\$1,780.00) per day as liquidated damages for each calendar day that final completion extends beyond the required date. The liquidated damages provided for herein are in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by COUNTY which are occasioned by any delay in CMAR achieving substantial completion or final completion on or after the established dates.

ARTICLE 6 – INSURANCE

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect the CMAR from liabilities that arise out of the performance of the work under this Contract. The CMAR is free to purchase additional insurance.

CMAR'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M. Best" rating of not less than A- VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect the CMAR from potential insurer insolvency.

6.1 Minimum Scope and Limits of Insurance:

CMAR will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

- 6.1.1 Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form Contractual liability coverage, and products – completed operations.
- 6.1.2 Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
- 6.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.
Note: The Workers' Compensation requirement will not apply to a CONTRACTOR that is exempt under A.R.S. § 23-901, and when such CMAR executes the appropriate COUNTY Sole Proprietor or Independent CMAR waiver form.
- 6.1.4 Builder's Risk Insurance ☒ does ☐ does not apply to this contract. If Builder's Risk Insurance applies to this contract, then the CONTRACTOR shall be required to maintain throughout the course of construction, Builder's Risk Insurance in a dollar amount equal to the full insurable value of the work under contract, which shall include "All Risk" coverage. Pima County shall be named as a "Loss Payee". CONTRACTOR shall be responsible for equipment, materials, and supplies until completion of the project and acceptance by Pima County.

6.2 Additional Insurance Requirements:

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

- 6.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CMAR.

- 6.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR.
- 6.2.3 Primary Insurance Endorsement: The CMAR'S policies will stipulate that the insurance afforded the CMAR will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 6.2.4 Insurance provided by the CMAR will not limit the CMAR'S liability assumed under the indemnification provisions of this Contract.

6.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, the CMAR must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement, 130 West Congress Street, 3rd Floor, Tucson, Arizona 85701-1317 or via fax to (520) 724-4434.

6.4 Verification of Coverage:

CMAR will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

- 6.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of Contract.
- 6.4.2 All certificates required by this Contract will be sent directly to the Department. COUNTY Project or Contract number and Project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.5 Approval and Modifications:

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

ARTICLE 7 - BONDS AND INSURANCE

CMAR will have and maintain the insurance coverage required by **Article 6 of APPENDIX B: CMAR – DP GENERAL CONDITIONS** and will provide proof thereof to COUNTY before execution of the Contract for Preconstruction Services. CMAR must provide payment and performance bonds and proof of insurance specific to construction to COUNTY prior to COUNTY's approval of the GMP, or if there are multiple GMPs, to the GMP to which they pertain. All insurance and bonds must conform to **Article 6 of APPENDIX B: CMAR – DP GENERAL CONDITIONS**.

ARTICLE 8 - TERMINATION FOR CONVENIENCE OR DEFAULT

COUNTY may terminate this Contract for convenience or default as provided in **Article 11 of APPENDIX B: CMAR – DP GENERAL CONDITIONS**. If this Contract is terminated for default and said termination is determined to be improper or wrongful, in whole or in part, then the termination will be converted to a termination for convenience under **Article 11.3.8 of APPENDIX B: CMAR – DP GENERAL CONDITIONS**, but only to the extent such termination is determined wrongful. In the event of a partial conversion to a termination for convenience, any sums due CMAR under the termination for convenience may be set off against amounts owed to COUNTY by CMAR as damages arising from the termination for default or otherwise.

ARTICLE 9 - INDEPENDENT CONTRACTOR

The status of CMAR is that of an independent Contractor. CMAR will perform its obligations under this Contract without supervision by COUNTY. Neither CMAR nor CMAR's officers, agents, employees, or subcontractors at any tier are employees of COUNTY or entitled to receive any employment-related fringe benefits under COUNTY's

Merit System. CMAR is responsible for payment of all Federal, State and local taxes associated with payments received pursuant to this Contract, and will indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CMAR's failure to pay such taxes.

ARTICLE 10 – ACCESS TO RECORDS

- A. This Contract is open with respect to all price and cost information, including invoices, estimates, pay applications, subcontractor bids or quotes, and any and all other financial or monetary information or data relevant to this Contract, whether in hard copy or in electronic form. CMAR will keep and maintain proper and complete books, records and accounts, which must be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY, including third-Parties designated by COUNTY. Failure of CMAR to keep or provide access to books or information is a material breach of this Contract.
- B. CMAR will retain all records relating to this Contract at least five (5) years after its termination or cancellation or, if later, until any related proceeding or litigation has been closed.
- C. CMAR's records for all Contracts, specifically including but not limited to lump sum Contracts (i.e. fixed price or stipulated sum Contracts), unit price, cost plus or time & material Contracts with or without a guaranteed maximum (or not-to-exceed amounts) will upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any COUNTY representative or any outside representative engaged by COUNTY for the purpose of examining such records. COUNTY or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of five (5) years after final payment or longer if required by law. COUNTY's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with CMAR employees, field and agency labor, subcontractors, and vendors.
- D. CMAR'S records must include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, Contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, memoranda, and any and all other agreements, sources of information and matters that may in COUNTY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document. Such records include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other of CMAR'S records which may have a bearing on matters of interest to COUNTY in connection with CMAR'S dealings with COUNTY (all of the foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:
 - 1. Compliance with Contract requirements for deliverables
 - 2. Compliance with approved plans and specifications
 - 3. Compliance with COUNTY's business ethics expectations
 - a. Compliance with Contract provisions regarding the pricing of change orders
 - b. Accuracy of CMAR representations regarding the pricing of invoices
 - c. Accuracy of CMAR representations related to claims submitted by the CMAR or any of its payees.
- C. CMAR will require all payees (examples of payees include but are not limited to subcontractors, material suppliers, insurance carriers) to comply with the provisions of this Article by including the requirements hereof in a written Contract agreement between CMAR and payee. CMAR will ensure that all payees (including those entering into lump sum Contracts) have the same right to audit provisions contained in this Contract.
- D. COUNTY's authorized representative(s) will have reasonable access to the CMAR'S facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and will be provided adequate and appropriate work space in order to conduct audits in compliance with this Article.
- E. If an audit inspection or examination in accordance with this Article discloses overpricing or overcharges to COUNTY (of any nature) by the CMAR and/or the CMAR'S subcontractors in excess of one hundred thousand

dollars (\$100,000.00), in addition to making adjustments for the overcharges, CMAR will reimburse the reasonable actual cost of COUNTY's audit to COUNTY. Any adjustments or payments which must be made as a result of any such audit or inspection of the CMAR'S invoices and/or records will be made within a reasonable amount of time not to exceed ninety (90) days from presentation of COUNTY's findings to CMAR.

- F. In addition to the normal paperwork documentation the CMAR typically furnishes to COUNTY, in order to facilitate efficient use of COUNTY resources when reviewing and/or auditing the CMAR'S billings and related reimbursable cost records, the CMAR agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distrubution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

ARTICLE 11 – CMAR'S PERFORMANCE

CMAR will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CMAR will obtain the written approval of COUNTY. For the purposes of this Article, the key personnel are those personnel whose resumes were included in CMAR's statement of qualifications referenced in the recitals to this Contract or otherwise agreed to during Contract negotiations and referenced in the CMAR's approved Project organization chart, incorporated herein by reference.

CMAR's performance of its Preconstruction Services obligations and CMAR's active participation in the design process are critical to the success of the Project and are the essence of this Contract for Preconstruction Services. Repeated failure by CMAR to carry out these responsibilities, without excuse for reasons outside the control of CMAR, is a ground for termination for default under **ARTICLE 11 of the CMAR – DP GENERAL CONDITIONS**. CMAR's performance of Preconstruction Services will be an important consideration in the determination whether to proceed to the Construction Services Phase with CMAR and will be a factor for consideration in future procurements.

CMAR is responsible for the quality, technical accuracy, timely completion, and coordination of all its efforts and other services furnished by CMAR under this Contract. Without additional compensation, CMAR will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the willful or negligent acts or omissions of CMAR found during or after the course of the services performed by or for CMAR under this Contract, to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Arizona

would exercise under similar conditions. CMAR's responsibility for these corrections or revisions exists regardless of COUNTY having knowledge of or condoning or accepting the products or the services. Any such resolution of deficiencies will be at no cost to COUNTY.

Correction of errors and omissions discovered on architectural or engineering plans and specifications are the responsibility of the Design Professional.

ARTICLE 12 - SUBCONTRACTORS

CMAR is fully responsible for all acts and omissions of its subcontractor(s) at every tier and of persons directly or indirectly employed by subcontractors at any tier and of persons for whose acts any of them may be liable to the same extent that CMAR is responsible for the acts and omissions of persons directly employed by CMAR. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

CMAR will ensure that all subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for Work they perform under this Contract. CMAR will not permit any subcontractor to perform Work that does not fall within the scope of the subcontractor's license, except as may be permitted under the Rules of the Registrar of Contractors.

For the purposes of this Article, "subcontractor" includes consultants to CMAR.

If this Contract or Project is funded wholly or in part under a federal grant, CMAR will not subcontract Work at any tier to any Contractor, firm, consultant, individual or other entity named in the federal System for Award Management (<https://www.sam.gov>) with an open exclusion.

CMAR will select subcontractors in accordance with A.R.S. 34-603.C.2.(e)(i) and CMAR's Subcontractor Selection Plan, incorporated and attached hereto as **APPENDIX H**.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND MODELS

- A. COUNTY, through its separate agreement with the design professional (DP), has and shall continue to have, ownership of all drawings, specifications, and other documents and electronic data furnished by DP.
- B. All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CMAR under this Contract vest in and become the property of COUNTY and will be delivered to COUNTY upon completion or termination of the services, but CMAR may retain and use copies thereof. COUNTY will not use the materials for any Project other than the Project for which it was prepared without the express permission of CMAR.
- C. In the event CMAR develops or generates a building information model (or equivalent) of the Project, CMAR will provide one electronic copy of the final model on permanent media to COUNTY. CMAR's delivery of the model to COUNTY shall constitute a grant to COUNTY of an irrevocable, paid-up, nonexclusive license to copy, use, display, disclose, or modify the model for any reasonable purpose for this Project. CMAR agrees that the rights granted to COUNTY include the ability to provide a copy of the model to any subsequent Contractor retained to maintain, modify or expand the Project in any way. COUNTY agrees that, as between COUNTY and CMAR only, any modifications to the model by or for COUNTY after final completion and acceptance of this Project is at COUNTY's sole risk and responsibility unless CMAR performs such modifications.

ARTICLE 14 - DISPUTE RESOLUTION

- A. At the initial Project meeting, the Parties will develop and establish an escalation procedure to be followed in the event of a failure to resolve an issue or disagreement at the field level. If disputes or disagreements arise, CMAR and COUNTY commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- B. The Parties will communicate regularly and work cooperatively to avoid or minimize disagreements or disputes. In the event disagreements or disputes occur, the Parties will work cooperatively at the field level to resolve the issues. CMAR and COUNTY will first attempt to resolve disputes or disagreements through discussions between CMAR's Representative and COUNTY's Representative.

If the Parties are not successful in reaching resolution at the field level, then the Parties will pursue resolution through escalation. If the Parties remain in disagreement, they will follow the procedures in paragraph D. below.

- C. Unless otherwise agreed in writing, CMAR will carry on the Work and maintain its progress during the course of any unresolved claims and controversy proceedings, and COUNTY will continue to make payments as they fall due to CMAR in accordance with the Contract Documents.
- D. In the event of a dispute between COUNTY and CMAR regarding any part of this Contract or the Contract Documents, or the Parties' obligations or performance hereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties will continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.
 - a) Mediation. If the Parties are unable to resolve the dispute through the special meeting and/or escalation, then upon written notice of either Party of the desire to pursue resolution through mediation, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, will be appointed. The Parties will share the cost of the mediator. The mediator will be given any written statements of the Parties and may review the Project site and any relevant documents. The mediator will call a meeting of the Parties within ten (10) days after appointment, which meeting will be attended by COUNTY's Project manager, CMAR's Project manager, and any other person who may be affected in any material respect by the resolution of such dispute. Such representatives will attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.
 - b) Mediation Minutes. No minutes will be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, are non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process will be completed within twenty (20) working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.
 - c) Arbitration. If a dispute involving one million dollars (\$1,000,000.00) or less is not resolved pursuant to the procedures set forth in paragraphs 1. and 2. above, then the Parties will submit the matter to binding arbitration in accordance with the following:
 - a. Jurisdiction. As permitted by A.R.S. § 12-1518, claims, disputes and other matters in question hereunder which cannot be resolved pursuant to the procedures set forth in paragraphs 1 and 2 above are subject to arbitration as set forth below; provided, however, that the arbitrators have no power to change any of the provisions of this Contract in any respect nor have they any power to make an award of reformation, and the jurisdiction of the arbitrators is hereby expressly limited accordingly.
 - b. Request. Either Party may serve the other with a written request for arbitration, which notice will also specify the name and address of one (1) person designated to act as arbitrator on behalf of that Party. Within fifteen (15) days after the service of such request, the other Party will give to the first Party written notice specifying the name and address of the person designated to act as arbitrator on its behalf. If the other Party fails to so notify the first Party within the time above specified, then the appointment of the second arbitrator will be made by the American Arbitration Association pursuant to the rules then in effect. The arbitrators chosen will meet within ten (10) days after the second arbitrator is appointed and will appoint a third arbitrator who is a competent, impartial person, and in the event of their being unable to agree upon such appointment within the foregoing 10-day period, the third arbitrator will be selected by the Parties themselves if they can agree thereon within a further period of fifteen (15) days. If the Parties do not so agree, then either Party on behalf of both may request the American Arbitration Association to appoint the third arbitrator.
 - c. Rules. The arbitration will be conducted in Pima County, Arizona, and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any decision rendered will be based upon Arizona law.
 - d. Decision. The arbitrators will render their decision, upon the concurrence of at least two (2) of their number, within thirty (30) days after the appointment of the third arbitrator. Their decision will be in writing and counterpart copies delivered to each Party. A decision in which any two (2) of the

arbitrators acting hereunder concur may be appealed directly to the Superior Court of Pima County within thirty (30) days of the date of the decision. Unless so appealed, such decision is all cases final, binding and conclusive upon the Parties and judgment upon the decision may be entered by any court having jurisdiction thereof.

- e. Fees. Unless otherwise required by the decision of the arbitrators, each Party will pay the fees and expenses of the original arbitrator appointed by such Party or in whose stead, as above provided, such arbitrator was appointed, and the fees of the third arbitrator, if any, will be borne equally by the Parties. Each Party will bear the expense of its own counsel, experts, and preparation and presentation of proof, in connection with all proceedings prior to the entry of a decision by the arbitrators.
- d) Litigation. If a dispute involving more than one million dollars (\$1,000,000.00) is not resolved pursuant to the procedures set forth in 1. through 3. above, then the dispute may be submitted to the appropriate State court of jurisdiction within Pima County or the Parties may submit the matter to Binding Arbitration pursuant to Sections 3. a. through e. above if both Parties agree to submit the dispute to the Binding Arbitration process.

ARTICLE 15 – GOVERNING LAW AND REMEDIES

Interpretation of the Contract Documents and any and all disputes arising under or in connection with the Project, Work and Contract Documents are governed by Arizona law. No suit or action may be commenced hereunder by any claimant other than in the Arizona Superior Court in Pima County, and only after all Contractual procedures have been exhausted.

Either Party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

CONSEQUENTIAL DAMAGES: EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, NEITHER THE COUNTY NOR CMAR IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF BREACH OF CONTRACT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS.

ARTICLE 16 – NONAVAILABILITY OF FUNDS

Notwithstanding any other provision in this Contract, this Contract may be terminated if, for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Contract. In the event of such termination, COUNTY has no further obligation to CMAR, other than to pay for services rendered prior to termination.

If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, Pima County's obligations under this Contract may be canceled by the Pima County Board of Supervisors. If such a cancellation should be necessary, COUNTY will reimburse CMAR for all services rendered and non-cancelable commitments made prior to the cancellation in the manner set forth in **ARTICLE 11 of the CMAR – DP GENERAL CONDITIONS**.

ARTICLE 17 – ASSIGNMENT

Neither CMAR nor COUNTY may, without the written consent of the other, assign, transfer, or sublet any portion or part of the Work or the obligations required by a Party under the Contract Documents.

ARTICLE 18 - NON-DISCRIMINATION

CMAR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of this Contract, CMAR will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 19 - AMERICANS WITH DISABILITIES ACT

CMAR will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42

U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CMAR is carrying out government programs or services on behalf of COUNTY, then CMAR will maintain accessibility to the program to the same extent and degree that would be required of the COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Contract.

ARTICLE 20 – BUSINESS ETHICS

A. Conflict of Interest: This Contract is subject to the provisions of A.R.S. 38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any Contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent of any other Party to the Contract in any capacity or a consultant to any other Party to the Contract with respect to the subject matter of the Contract."

B. Ethics: During the course of pursuing Contracts with COUNTY and while performing Contract Work in accordance with this Contract, CMAR agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the COUNTY's best interests.

- 1) CMAR will take reasonable steps to prevent any actions or conditions which could result in a conflict with COUNTY's best interests. These obligations apply to the activities of CMAR employees, agents, subcontractors, subcontractor employees and consultants to CMAR.
- 2) CMAR employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to COUNTY's representatives, employees or their relatives.
- 3) CMAR employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.
- 4) CMAR will notify a designated COUNTY representative within forty-eight (48) hours of any instance where the CMAR becomes aware of a failure to comply or possible failure to comply with the provisions of this Article.
- 5) Upon request by COUNTY, CMAR agrees to provide a certified Management Representation Letter executed by selected CMAR representatives in a form agreeable to COUNTY stating that they are not aware of any situations violating the business ethics expectations outlined in this Contract or any similar potential conflict of interest situations.
- 6) CMAR will include this clause in all Contracts with subcontractors and material suppliers receiving more than twenty-five thousand dollars (\$25,000.00) in funds in connection with COUNTY's Project.
- 7) CMAR will permit interviews of employees, reviews and audits of accounting or other records by COUNTY representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of CMAR's employees, agents, representatives, vendors, subcontractors, and other third Parties paid by CMAR in their relations with COUNTY's current or former employees or employee relatives.
- 8) CMAR will implement a program requiring its employees to sign acknowledgements that they have read and understand COUNTY's Business Ethics Expectations and the related obligations outlined in this Contract.

ARTICLE 21- AUTHORITY TO CONTRACT

CMAR warrants its right and power to enter into this Contract. If any Court or administrative agency determines that COUNTY does not have authority to enter into this Contract, COUNTY will not be liable to CMAR or any third Party by reason of such determination or by any reason of this Contract.

ARTICLE 22 - NON-WAIVER

The failure of either COUNTY or CMAR to insist in any one or more instance upon the full and complete compliance of any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time is not an accord and satisfaction.

ARTICLE 23 – NOTICES

Any notice required or permitted to be given under this Contract will be in writing and served by personal delivery or by certified mail upon the other Party as follows:

COUNTY:

Jackson Jenkins, Director
Pima County Regional wastewater Reclamation Department
201 North Stone Avenue
Tucson, AZ 85701
Phone: (520) 724-6549
Fax: (520) 579-6006
Email: jjenkins@pima.gov

CMAR:

Steve Shepherd, President
Borderland Construction Company
400 East 38th Street
Tucson, AZ 85713
Phone: (520) 623-0900
Fax: (520) 623-0232
Email: sshep@borderland-inc.com

ARTICLE 24 - CONTRACT DOCUMENTS

- A. This Contract is structured as a series of interrelated documents comprised of this Contract, associated appendixes, exhibits, and additional documents incorporated by reference.
- B. The "Contract Documents" are comprised of the following in order of precedence:
1. This Contract, including exhibits, as it may be modified from time to time by the Parties.
 2. Supplementary Conditions, if any, that modify the General Conditions.
 3. APPENDIX B CMAR - DP GENERAL CONDITIONS.
 4. Special Conditions, if any, providing Project-specific conditions and requirements.
 5. The complete design as accepted by the COUNTY, including drawings, specifications, and COUNTY-approved design documents.
 6. COUNTY's Project Criteria developed by COUNTY and Design Professional (if any).
 7. Standard Specifications and similar type documents incorporated by reference.
 8. COUNTY's Request for Qualifications (RFQ) with all Addenda, Exhibits and CMAR's Statement of Qualifications in response to the RFQ.

In the event of conflict between or among successive addenda, amendments, change orders, or modifications thereto, the later govern over the earlier in time, but only to the extent of any conflict.

- C. The Contract Documents, including all Appendixes, Exhibits, attachments, amendments, change orders, and documents incorporated by reference are complementary and should be interpreted in harmony so as to avoid conflict or ambiguity. Terms, words and phrases used in the Contract Documents have the meanings defined in the **CMAR – DP GENERAL CONDITIONS** or, if not specifically defined, their ordinary and common meaning interpreted in a manner consistent with construction and design industry standards and practice. The objective of the Contract Documents is to provide a Contractual framework and define the relationship between the Parties within which the Parties may complete the Project on time and within the budget for construction.
- D. In the event of any conflict between this Contract and any other document, the Contract governs, and in the event of a conflict between any Appendix or Exhibit and any other document, the order of precedence is as listed in B above.

ARTICLE 25 - MISCELLANEOUS

- A. **SUCCESSORSHIP.** The provisions of this Contract, including the other Contract Documents, are binding upon the Parties, their employees, agents, heirs, successors and assigns.

- B. HEADINGS.** Headings used in the Contract Documents are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.
- C. SEXUAL HARASSMENT.** The CMAR will comply with COUNTY's current policy regarding sexual harassment. COUNTY prohibits sexual harassment by any person on COUNTY's premises or at any COUNTY-affiliated functions or facilities.
- D. MODIFICATIONS.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both Parties.

ARTICLE 26 – PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation that underlies this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any records submitted in response to the solicitation that underlies this Contract that CMAR believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by CMAR prior to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to CMAR of the request for release, unless CMAR has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. CMAR shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

County is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is County in any way financially responsible for any costs associated with securing such an order.

ARTICLE 27 – LEGAL ARIZONA WORKERS ACT COMPLIANCE

CMAR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CMAR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CMAR will further ensure that each subcontractor who performs any work for CMAR under this Contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CMAR and any subcontractor in order to verify such Party's compliance with the State and Federal Immigration Laws.

Any breach of CMAR'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CMAR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CMAR will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to COUNTY approval if SBE or MWBE preferences apply) as soon as possible so as not to delay Project completion.

CMAR will advise each subcontractor of COUNTY'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this Contract subjecting SUBCONTRACTOR to penalties up to and

including suspension or termination of this Contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CMAR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CMAR's approved construction or critical milestones schedule, such period of delay is excusable delay for which CMAR is entitled to an extension of time, but not costs.

ARTICLE 28 - SEVERABILITY

If any provision or any part of a provision of the Contract Documents is finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination will not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which will remain in full force and effect as if the unenforceable provision or part were deleted.

ARTICLE 29 - ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior contemporaneous agreements and understandings are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Contract on the dates written below.

APPROVED:

Chair, Board of Supervisors

Date

CMAR:

Signature

Name and Title (Please Print)

Date

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Deputy County Attorney

CHARLES WESSELHOFT

Name (Please Print)

JAN 19 2016

Date